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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,511	05/22/2001	Denis John Albert	31386	8617

23589 7590 07/29/2003

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EXAMINER

ALVO, MARC S

ART UNIT PAPER NUMBER

1731

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/763,511

Applicant(s)

ALBERT ET AL.

Examiner

Steve Alvo

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 13-23, 25-28 and 31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☒ Claim(s) 9-12 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The restriction requirement of June 12, 2002 is repeated and made Final. Applicant elected claims 9-12 and 29-30. Claims 1-8, 13-28 and 31 are withdrawn from consideration.

The technical feature, of accessing a wood fiber, is taught by BEALL et al '308 or '728.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12 and 30 are rejected under 35 U.S.C. 103(a) as obvious over BEALL et al '308 or BEALL et al '728 with or without CHASE.

BEALL et al '308 or BEALL et al '728 teach sending sound waves (ultrasonic) waves through wood and measure the velocity of the sound waves passing through the wood and determines characteristics of the wood, e.g. dynamic strength (BEALL et al '728, col. 2, line 1 or BEALL et al '308, col. 2, lines 2-3), moisture content, internal knots and/or wood density (column 9, lines 15-16). CHASE teaches that the strength measurements of wood are related to the fiber length of the wood fibers. If BEALL et al '308 or BEALL et al '728 are not thought to teach assessing the fiber characteristics, e.g. fiber length, from the strength measurements of BEALL et al '308 or BEALL et al '728 then such would have been obvious from the teachings of CHASE. It would have been obvious to generate the noise by impact instead of the ultrasonic generator of BEALL et al '308 or BEALL et al '728 as BEALL et al '308 or BEALL et al '728

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teaches that it is known to generate the sound by impact (BEALL et al '728, column 2, lines 25-32, or BEALL et al '308, column 2, lines 29-36.

With respect to claims 10, 9 and their dependent claims, the properties of the wood, e.g. wood strength, are directly related to the properties of the individual fibers, which make up the wood. Wood composed of degraded or weakened fibers would result in a weaker wood. Wood composed of fibers having high strength would result in a stronger wood. If the wood were not held together by strong fibers the wood would break more easily. Applicant has chosen to broadly claim "fiber characteristics" without specifying specific characteristics, except for the "average fiber length" and the "strength". As set forth above the strength of the wood would be directly related to the strength of the fibers from which is made and thus claim 12 would have been obvious.

The art does not teach determining the average fiber length of wood fibers from a solid wood member.

Claim 29 is allowed over the art of record.

Claim 11 has not been limited to a "computer comprising stored information on the average fiber length of produced wood fiber or wood pulp" verses sound velocity through wood" nor to "by reference to said stored information on the fiber average length verses detected sound velocity through the solid wood member". Instead the sound velocity has been related to the suitability of wood, such would have been obvious from the BEALL et al references.

When filing an "**Official**" FAX in Group 1730, please indicate in the Header (upper right) "**Official**" for papers that are to be entered into the file. The "**Official**" FAX phone numbers for this TC 1700 are:

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**Non-Final Fax:** (703) 872-9310      **After-Final FAX:** (703) 872-9311.

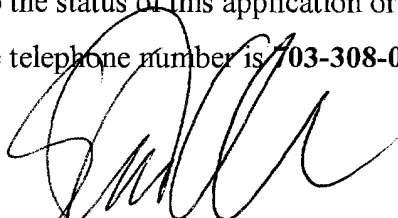
When filing an **"Unofficial"** FAX in Group 1730, please indicate in the Header (upper right) **"Unofficial"** for Draft Documents and other Communications with the PTO that are not for entry into the file of the application. This will expedite processing of your papers. The **"Unofficial"** FAX phone number for this Art Unit (1731) is **(703) 305-7115**.

Any inquiry concerning this communication or earlier communications from the **primary examiner** should be directed to **Steve Alvo** whose telephone number is **(703) 308-2048**. The Examiner can normally be reached on Monday - Friday from **6:00 AM - 2:30 PM (EST)**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Steve Griffin, can be reached on 703-308-1164.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Group receptionist** whose telephone number is **703-308-0661**.

MSA  
7/28/03



**STEVE ALVO**  
**PRIMARY EXAMINER**  
**ART UNIT 1731**